

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
SHAW FAMILY ARCHIVES, LTD., EDITH	:
MARCUS and META STEVENS,	:
	:
	:
Plaintiffs,	: Index No. 05 CV 3939 (CM)
	:
-against-	: Hon. Colleen McMahon
	:
	:
CMG WORLDWIDE, INC., an Indiana Corporation:	:
and MARILYN MONROE, LLC, a Delaware	:
Limited Liability Company,	:
	:
Defendants.	:
	:
-----X	

SECOND DECLARATION OF DAVID MARCUS

I, DAVID MARCUS, an attorney duly licensed to practice law before this Court, declare the following facts under penalty of perjury:

1. I represent Shaw Family Archives, Ltd., Edith Marcus, Meta Stevens and Bradford Licensing Associates (collectively referred to as the "Shaw Family") in the above-captioned matter and am fully familiar with the facts set forth herein. I respectfully submit this declaration on behalf of the Shaw Family in support of its motion to preclude evidence relied upon in Defendants' Cross-Motion for Summary Judgment on their public domain claim.

2. Attached hereto as Exhibit A, is a true and correct copy of Defendants' Third Amended Complaint, dated August 9, 2007.

3. Attached hereto as Exhibit B, is a true and correct copy of the Shaw Family's first set of document demands to the Defendants, dated October 8, 2006.

4. Attached hereto as Exhibit C, is a true and correct copy of Defendants' responses to the Shaw Family's first set of document demands, dated December 26, 2006.

5. Attached hereto as Exhibit D, is a true and correct copy of the Shaw Family's first set of interrogatories to the Defendants, dated February 1, 2007.

6. Attached hereto as Exhibit E, is a true and correct copy of the Defendants' responses to the Shaw Family's first set of interrogatories, dated March 19, 2007.

7. Attached hereto as Exhibit F, is a true and correct copy of the Shaw Family's second set of interrogatories to the Defendants, dated July 10, 2007.

8. Attached hereto as Exhibit G, is a true and correct copy of the Shaw Family's second set of document requests to the Defendants, dated July 16, 2007.

9. Attached hereto as Exhibit H, is a true and correct copy of Defendants' response to the Shaw Family's second set of interrogatories, dated August 13, 2007.

10. Attached hereto as Exhibit I, is a true and correct copy of Defendants' response to the Shaw Family's second set of documents, dated August 27, 2007.

11. Attached hereto as Exhibit J, is a true and correct copy of the Shaw Family's third set of interrogatories to the Defendants, dated November 1, 2007.

12. Attached hereto as Exhibit K, is a true and correct copy of the Shaw Family's third set of document requests to the Defendants, dated November 1, 2007.

13. Attached hereto as Exhibit L, is a true and correct copy of the Defendants' response to the Shaw Family's third set of interrogatory requests, dated December 4, 2007.

14. Attached hereto as Exhibit M, is a true and correct copy of the Defendants' response to the Shaw Family's third set of document requests, dated December 4, 2007.

15. Attached hereto as Exhibit N, is a true and correct copy of a series of electronic communications between Christopher Serbagi, Esq., and Jonathan Strauss, Esq., dated December

4, 2007 and December 5, 2007. Based upon the Defendants' representation that it would supplement interrogatory No. 1 of the Shaw Family's third set of interrogatories, the Shaw Family took the deposition of MMLLC's 30(b)(6) witness on December 20, 2007 and CMG's 30(b)(6) witness on December 27, 2007.

16. Attached hereto as Exhibit O, is a true and correct copy of two electronic communications between Christopher Serbagi, Esq., Paula Colbath, Esq. and Theodore Minch, Esq., dated December 19, 2007 and December 20, 2007.

17. Attached hereto as Exhibit P, is a true and correct copy of excerpts from the deposition of David Strasberg, taken on December 20, 2007.

18. Attached hereto as Exhibit Q, is a true and correct copy of excerpts from the deposition of Mark Roesler, taken on December 27, 2007.

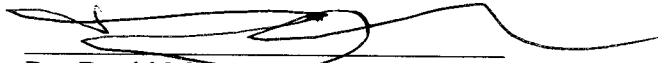
19. Defendants failed to serve the Shaw Family, on or before December 31, 2007, the discovery end-date herein, with any of the documents annexed to the following: (i) Strauss Decl., Exs. 3, 4, 6, 7-10, 17, 28-31, 40, 40-42, 45; (ii) the Declaration of Maureen Cloonan, dated February 12, 2008, Exs. A-M; (iii) the Declaration of David Strasberg, dated February 12, 2008, Exs. A-K; and (iv) the Declaration of Mark Roesler, dated February 12, 2008, Exs. A-B.

20. Since the close of discovery, the Defendants have asserted new allegations in support of their public domain claim that were not raised in their Third Amended Complaint or interrogatory responses. The Shaw Family would be prejudiced if the Court considers these new allegations and claims, and the documents described in ¶ 22 above, as the Shaw Family never had the opportunity to: (i) review and research the claims and documents; (ii) investigate them during the examination of Defendants' deponents; (iii) research whether the publications were printed with the permission of Sam Shaw; (iv) research whether the images were first published in a Berne Convention country other than the United States; (v) research whether any

of the publications were copyright registered, and the registrations renewed, which could then be assigned to Sam Shaw (now Edith Marcus and Meta Stevens) as the true copyright owners; (vi) obtain proof that Sam Shaw was not employee of the producers of *The Seven Year Itch*; and (vii) whether proper copyright notice was given, and if not given, what steps Sam Shaw took to correct any defective notice; and (vii) amend its Answer to the Defendants' Third Amended Complaint accordingly.

Dated: New York, New York
March 4, 2008

LAW OFFICES OF CHRISTOPHER SERBAGI

A handwritten signature in dark ink, appearing to read 'David Marcus', is written over a horizontal line.

By: David Marcus
488 Madison Avenue
New York, New York 10022
Tel: 212-593-2112
Fax: 212-308-8582

Attorneys for Shaw Family Archives, Ltd., Bradford
Licensing Associates, Edith Marcus and Meta Stevens